United Nations A/63/287

General Assembly

Distr.: General
13 August 2008
English
Original: English/French/Spanish

Sixty-third session
Item 67 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protection of migrants

Report of the Secretary-General

Summary

The present report, submitted in accordance with General Assembly resolution 62/156, contains a summary of communications received from Governments in response to a note verbale sent on 4 July 2008 by the Office of the United Nations High Commissioner for Human Rights on behalf of the Secretary-General requesting information on the implementation of the resolution. The report also contains a summary of communications received from Governments in response to a note verbale sent on 28 June 2007 by the Office of the High Commissioner on behalf of the Secretary-General requesting information on the implementation of resolution 61/165. Owing to the late submission of information by some Member States, their responses were not included in the previous report (A/62/299). The Secretary-General also reports on the status of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the activities of the Special Rapporteur on the human rights of migrants and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.

* A/63/150.

08-46103 (E) 050908 100908

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I. Introduction

1. In paragraph 19 of its resolution 62/156, the General Assembly requested the Secretary-General to submit a report on the implementation of the resolution at its sixty-third session and to include in that report an analysis of ways and means to promote the human rights of migrants, including through the use of data and statistics on the contribution of migrants to recipient countries.

2. Accordingly, the Office of the United Nations High Commissioner for Human Rights (OHCHR), on 4 July 2008, transmitted a note verbale to Member States on behalf of the Secretary-General requesting information on the implementation of the resolution. The present report contains the responses. In addition, the report summarizes the responses of Governments to a note verbale transmitted by OHCHR on behalf of the Secretary-General on 28 June 2007 in accordance with Assembly resolution 61/165 that were not included in the previous report (A/62/299) owing to their late submission by Member States.

II. Information from Governments with regard to the implementation of General Assembly resolution 61/165

3. As at 12 August 2008, the Governments of the following Member States had replied to the note verbale sent on 28 June 2007: Argentina, Bosnia and Herzegovina, Burkina Faso, Italy, Lebanon, Mauritius and Togo. Summaries of the responses are provided below. The full text of the responses is available upon request at OHCHR.

4. At the time of the submission of the present report, OHCHR had also received responses from Costa Rica, Egypt and Uruguay, but the deadline for the submission of the report to the General Assembly did not permit their inclusion. Those responses will be reflected in the report to be submitted to the Assembly at its sixty-fourth session.

Argentina

5. The Government indicated in March 2007 that it had ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

6. The Government also provided information on the new National Migration Act (Law No. 25,871), which has been in effect since January 2004. This law introduces a number of amendments to the previous law, adapting its provisions to those of international law. The new law establishes the migrant population's right to education and health care, regardless of migration status. Furthermore, the new law takes into account the importance of promotion by the State of initiatives to enhance the integration of the migrant population in Argentina. The new law also includes a mechanism which facilitates procedures for migrants from countries members of the Southern Common Market (MERCOSUR) to obtain legal residence in Argentina. Expulsion proceedings require the intervention of the judicial authorities, in cooperation with the National Directorate of Migration. The offence of trafficking in migrants has been defined for the first time in the migration legislation of Argentina.

7. The Government reported that regulations for the implementation of this law were being developed. To that end, consultations are under way with the different sectors of Government involved in this field, and also with civil society organizations. The Ministry of the Interior and the National Directorate of Migration have established a series of provisional measures pending the completion of the regulations for this new law. Such measures include National Directorate of Migration directive No. 2074/04 of 28 January 2004, which suspends expulsions of nationals of adjacent countries. Such persons will be able to regularize their situation once the regulations for the law have been finalized, except where expulsions are ordered because of criminal records. Mention should also be made of National Directorate of Migration directive No. 17,627 of 23 April 2004, which rescinds all detentions prescribed by the National Directorate of Migration in the case of migrants threatened with expulsion orders.

8. The Government also provided information on the meeting of Ministers of the Interior of MERCOSUR and Associated States, which addressed the topic of migration as part of the regional process. Their Declaration of Principles issued on 17 May 2004 recognizes the important contribution of the migrant population to the development of member States, prioritizes respect for their rights, rejects mass expulsions and criminalizes undocumented migration. Another instrument adopted within the MERCOSUR framework was the Agreement on residency for nationals of the States members of MERCOSUR, Bolivia and Chile. In this connection, Argentina has launched its national programme to regularize the status of migrants, entitled the "Patria Grande" programme.

9. The Government also provided information on its National Anti-Discrimination Plan, adopted by national decree No. 1086/2005 of 8 September 2005. The Ministry of Foreign Affairs, the National Institute to Combat Discrimination, the Human Rights Secretariat and the Ministry of Justice were involved in the drafting of the Plan, which includes a specific chapter on migration and concrete proposals for the protection of migrants.

10. Finally, the Government reported on the participation of Argentina in various international forums on migration, particularly the United Nations High-level Dialogue on International Migration and Development and the Ibero-American Meeting on Migration and Development.

Bosnia and Herzegovina

11. The Government reported on the ratification on 13 December 1996 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which entered into force in 2003. Information was also provided regarding the submission on 27 July 2007 of the initial report on the implementation of provisions of the Convention to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, which monitors the implementation of the Convention by States parties thereto. Information was also provided regarding the preparation of the initial report, the institutions that have contributed and the process of elaboration.

12. The Government indicated that the conclusions and recommendations of the Committee regarding the initial report will be submitted to all responsible authorities with a view to their implementation.

13. The Government reported that the Ministry of Security is the institution in charge of migration issues. The Foreign Affairs Service and the State Border Police are also competent in the protection of migrant workers.

14. Regarding the international framework, the Government indicated that Bosnia and Herzegovina has ratified the United Nations Convention against Transnational Organized Crime, the Protocol against the Smuggling of Migrants by Land, Sea and Air, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

15. The Government reported that in April 2005 the Council of Ministers had adopted a new State Action Plan for Combating Trafficking and Illegal Migration in Bosnia and Herzegovina for the period 2005-2007, the Operative Plan of Activities for 2005 and the Action Plan for Combating Trafficking in Children with a view to setting a strategic plan for a three-year period and formulating activities and measures to prevent trafficking and protect and support victims.

16. Information was also provided in relation to the adoption in August 2003 by the Council of Ministers of the decision on the procedures and manner of coordination of activities on the prevention of trafficking and illegal migration in Bosnia and Herzegovina and the establishment of a State Coordinator for Bosnia and Herzegovina (Official Gazette, No. 24/03).

17. The Government supplied information on the Law on the Movement and Stay of Aliens and Asylum and the rule book on the protection of aliens victims of trafficking, which is the framework that stipulates the conditions for granting temporary stay on humanitarian grounds to victims of trafficking. They also define the responsibility of the Ministry of Security in order to ensure special protection and assistance to victims of trafficking. Information was also provided regarding the investigations conducted by the Prosecutor's Office on charges of trafficking.

18. The Government also furnished information on cooperation between the office in Sarajevo of the International Organization for Migration, and the police in the implementation of protection programmes for undocumented migrants and voluntary return. Information about cooperation with civil society organizations was also provided.

19. With regard to measures undertaken by the State to combat racism, racial discrimination, xenophobia and related intolerance, information was provided regarding the Roma Committee, an institution created with a view to promoting tolerance and respect for Roma communities in Bosnia and Herzegovina.

20. The Government reported on bilateral readmission agreements signed with Croatia, Italy, Germany, Serbia, Montenegro, Sweden, Norway, Denmark, Romania, Bulgaria, the former Yugoslav Republic of Macedonia, Slovenia, Austria, Belgium, the Netherlands, Luxembourg, Spain, Slovakia and France.

21. Information was also provided regarding national legislation for the regulation of migration flows. In this sense, the Law on the Movement and Stay of Aliens and Asylum, which entered into force on 14 October 2003, regulates conditions and procedures for aliens to enter and stay in the country. The Government indicated that a new law will enter into force soon, harmonizing the applicable national law with the principles of the Convention and European Union standards. The Law on

the Recruitment of Aliens and Stateless Persons determines the conditions under which work permits may be issued to aliens. The right to an effective legal remedy is stipulated in article 8 of the Law on the Movement and Stay of Aliens and Asylum. Information was also provided with regard to the Law on Monitoring and Control of the State Border Crossing.

22. The Government provided information about the centre for the reception of undocumented migrants and its plan to establish a regional centre for combating cross-border organized crime.

23. The Government also reported on the conclusion of international bilateral agreements establishing efficient cooperation among the police and immigration services in the fields of combating organized crime, trafficking in human beings and undocumented migration.

24. Information was provided on the project to establish a legislative, regulatory and institutional framework in the field of visas, migration and asylum harmonized with European Union law, with the participation of the competent institutions of the country. In the framework of this project, an interdepartmental working group was established in order to prepare a draft of the Law on the Movement and Stay of Aliens and Asylum.

25. In 2006, Bosnia and Herzegovina joined project Ilareia, aimed at improving cooperation at the bilateral and multilateral levels to combat cross-border trafficking. The project was created by the Greek Ministry of Public Order with the support of the European Commission. The Government also indicated its participation in the Hera project, aimed at combating trafficking in human beings in Central and Southern Europe.

26. The Government also provided information about its strategy on integrated border management, adopted by the Council of Ministers in July 2005.

27. Information was provided about the rights contained in the State Criminal Procedure Code, namely, the right for a detained person to be promptly informed of any charges against him or her, the right to take proceedings before a court in case of detention and the right to have the free assistance of an interpreter.

28. Finally, the Government provided information on the Foreign Affairs Service, part of the Ministry of Security, which is competent to deal with issues related to migration.

Burkina Faso

29. The Government of Burkina Faso reported that it had taken a number of legal and institutional measures to protect the rights of migrants and to enhance the integration of those living in Burkina Faso.

30. In the field of national legislation, the Constitution of Burkina Faso strictly prohibits all forms of discrimination based on criteria that could adversely affect the rights of migrants. Similarly, the Individual and Family Code of Burkina Faso grants foreigners the same civil rights as those enjoyed by nationals. Labour laws also prohibit any possible discrimination against foreign workers, and employers that recruit foreign workers are required to provide employment contract visas, in order

to enable the competent authorities to verify that the contracts comply with the rights of migrant workers.

31. The Government reported that there was no discrimination in the justice system that would impede migrants' access to the competent courts in order to ensure the recognition and exercise of their rights.

32. The Government reported on the arrangements in place to promote the integration of migrants in Burkina Faso. In that connection, community days are held each year for foreign communities in Burkina Faso. The various sociocultural events held on these occasions provide an opportunity for the cultural self-expression of foreign communities living in Burkina Faso. They also allow cultural exchanges and friendships between individual communities, on the one hand, and between those communities and the native-born population, on the other hand.

33. Regarding entry into and stay in the territory of Burkina Faso, the Government has established a simplified procedure for obtaining visas which enables foreigners subject to this requirement to obtain their visas at the airport, if there is no Burkina Faso embassy or consulate in their country of origin.

34. The Government indicated that Burkina Faso was engaged in a process of regional integration with the other countries members of the Economic Community of West African States and of the West African Economic and Monetary Union. Burkina Faso therefore applies measures for the free movement of people and goods with respect to nationals of those countries.

35. Finally, the Government indicated that an annual training course had been established for border patrol officers. One of the course's training modules deals with the rights of migrants, with a view to increasing the officers' knowledge in that area.

Italy

36. The Government of Italy reported on the international human rights treaties ratified by Italy, namely, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Convention against Transnational Organized Crime and its Protocols.

37. Information was also provided regarding the cooperation of the Government with the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) and the Italian Red Cross in the implementation of programmes to assist undocumented migrants on the island of Lampedusa. Information was provided about the agreement signed with Médecins sans Frontières aimed at providing additional health-care services to migrants who arrive in Lampedusa.

38. The Government reported on the establishment of a Monitoring Centre on Prostitution and Trafficking in Human Beings within the Interior Ministry.

39. The Government also reported on the establishment of the Office against Racial Discrimination within the Ministry for Rights and Equal Opportunities. Within its framework, a registry of associations working against discrimination has been created. Information was also provided with regard to the establishment in January 2004 of the Committee against Discrimination and Anti-Semitism.

40. The Government furnished information on the Centres for Temporary Stay and Assistance for undocumented migrants, the conditions of the Centres, the length of stay, and the access to the centres guaranteed to representatives of UNHCR, IOM and the International Red Cross. These centres are supervised by the Department for Civil Liberties and Immigration within the Interior Ministry. Information related to the training of staff working in the reception centres was also provided.

41. The Government provided information on the reception services set up at border crossing points to provide information and assistance to aliens who have arrived in Italy seeking to apply for asylum or who wish to stay in Italy for longer than three months.

42. The Government also reported on its participation in the Separated Children in Europe Programme, a joint European initiative for the protection and promotion of the rights of unaccompanied migrant minors.

43. Information was also given regarding the Foreign Minors Committee established within the Department of Social Affairs, which is aimed at supervising the reception of minors, the conditions of residence of unaccompanied minors temporarily admitted into the country and their repatriation and reunification with their families in their countries of origin.

44. The Government supplied information on the agreements on repatriation procedures reached with the countries of origin of the unaccompanied minors and the guidelines for repatriation set out by the Foreign Minors Committee.

45. Lastly, the Government indicated that Italian legislation prohibits the expulsion of aliens under the age of 18, unless the minor requests to be reunited with his or her family.

Lebanon

46. The Government of Lebanon reported that it had not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families because some provisions were incompatible with its national legislation and therefore suggested that accession to the Convention should be deferred for the time being. However, the Government has undertaken a series of measures to protect the rights of migrants at the national level.

47. The Government reported on the adoption of directive 10/2007, which established a national steering committee on the status of women migrant domestic workers in Lebanon. The steering committee is to follow up on and implement the recommendations of a workshop held in Beirut from 28 to 30 November 2005, to raise awareness of the situation of women migrant domestic workers in Lebanon and to design and implement projects to promote and protect the rights of women migrant domestic workers in conjunction with the competent Government departments, the International Labour Organization, other relevant international and

Arab organizations, civil and national bodies, and committees and the embassies concerned.

48. According to the Government, the steering committee held several meetings at which the possibility of drafting a standard employment contract for female foreign domestic workers was discussed, together with the elaboration of legal provisions to protect such workers. Also, the Government informed us that on 9 July 2003, the Labour Ministry adopted a decision (70/1) regarding the regulation of the work of agencies that recruit female foreign domestic workers in order to guarantee their rights, prevent violations by employers or the owners of the agencies and regulate the relationships among the three parties. Likewise, on 6 July 2004, the Labour Ministry adopted decision 117/1 concerning an insurance policy for foreign workers. The policy covers life insurance, repatriation of mortal remains, compensation for a total or partial disability caused by an accident and the costs of hospitalization in the event of an accident.

49. Finally, the Government provided information about its intention to modify article 7 of the Labour Code, which currently excludes domestic workers, to allow them to be covered.

Mauritius

50. The Government of Mauritius provided information on its procedures to facilitate the recruitment and stay of foreign workers in Mauritius. In that regard, the Passport and Immigration Office is the institution in charge of the work permit applications of migrant workers.

51. With regard to national legislation, the Government indicated that the Constitution guarantees the applicability of fundamental rights and liberties to all migrant workers in Mauritius. Section 6 of the Constitution provides for protection from slavery and forced labour, and section 16 provides for protection from discrimination. The Government reported that the labour laws in force in Mauritius are applicable to all migrant workers. Migrant workers have the right to access social services and the criminal justice system, as well as to form or join a trade union and take part in its activities.

52. The Government reported on the ratification on 24 September 2003 of the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

53. The Government also indicated that the national framework to combat child trafficking and to protect women from all forms of gender discrimination, abuse and exploitation consists of the Child Protection Act, the Criminal Code (sect. 254 — Sexual Harassment), the Sex Discrimination Act 2002 and the Labour Act 2004.

54. Information was also provided about regular inspections of workplaces carried out by officers of the Special Migrant Workers' Unit of the Ministry of Labour, Industrial Relations and Employment in order to verify that employers are complying with the terms and conditions of employment as provided for in contracts of employment and in the current labour legislation. The inspectors verify whether the migrant workers have received a copy of the contract of employment in a language that they can understand. Moreover, the Ministry of Labour, Industrial

Relations and Employment provides information to the migrant workers on their rights and obligations as stated in their contracts of employment.

55. The Government furnished information on migrant workers' living conditions in Mauritius. In that sense, the Ministry of Health and Quality of Life and the Fire Authority ensure that living conditions comply with the law.

56. According to the Labour Act, in the event that a migrant worker considers that the termination of his/her contract is unjustified, he/she has the possibility of either claiming a severance allowance before the Industrial Court or suing the employer for damages before the Ordinary Court.

57. Information was also provided about the close cooperation between the Government of Mauritius and the International Organization for Migration (IOM) in order to promote the overseas deployment of Mauritian workers. In that regard, local staff has already received training organized by IOM.

58. The Government indicated that in order to ensure that the labour migration occurs in an orderly manner, the Ministry of Labour, Industrial Relations and Employment signs agreements with potential employers prior to the departure of migrant workers to work abroad. Those agreements regulate different issues, such as modalities of transport, wages, repatriation, remittances and terms of contract, possibilities of permanent residence, overtime, lodging and responsibilities of the parties concerned. For this purpose, before starting any recruitment procedure, the embassies of Mauritius abroad compile information about the potential companies, which is provided to the Ministry of Labour, Industrial Relations and Employment.

59. The Government provided information regarding the bilateral labour cooperation agreement signed with the Government of China aimed at ensuring that the recruitment of Chinese workers in Mauritius is carried out according to the legal framework and prescribed procedures. The agreement regulates, inter alia, conditions of work, the relevant aspects of labour migration and the recruitment contracts of Chinese migrant workers through Chinese recruitment agencies.

60. The Government also reported on the Special Migrant Workers Unit, which is a special unit within the Ministry of Labour, Industrial Relations and Employment. Among its responsibilities are carrying out inspections in order to verify that terms and conditions of employment of foreign workers are respected, vetting employment contracts of foreign workers that set a salary below the minimum wage and ensuring that the working conditions are appropriate.

Togo

61. The Government reported that it had no objections to the content or implementation of this resolution, which appeared to be in conformity with existing texts approved by it at important meetings on this subject.

III. Information from Governments with regard to the implementation of General Assembly resolution 62/156

62. As at 12 August 2008, the Governments of the following Member States had replied to the note verbale sent on 4 July 2008: Canada, Cuba, Japan, Slovakia and

Turkey. Summaries of the responses are provided below. The full text of the responses is available upon request at OHCHR.

Canada

63. Canada believes that migration is a positive occurrence for societies, which, when properly managed, contributes to countries' economic and social development. Canada reported that it has one of the highest per capita rates of permanent immigration in the world — 0.8 per cent in recent years — and that it has welcomed 3.5 million immigrants in the past 15 years. In 2006, about 20 per cent of Canada's population was foreign born. The Government reported that in 2006 about 85 per cent of permanent residents who were eligible for Canadian citizenship had acquired that status.

64. On the protection of the human rights of migrants, Canada takes the approach of promoting the universality of human rights for all individuals, including permanent residents or temporary migrant workers. The Canadian Charter of Rights and Freedoms protects the human rights and fundamental freedoms of all persons in Canada. The provisions of the Charter apply to all decisions of Canadian authorities under Canadian law, including with regard to individuals in the country without regular migration status.

65. The Government also provided information about its extensive research programmes to examine immigrant outcomes and thereby enhance the understanding of the contributions made by immigrants. Although Canada does not have a single set of data to measure those contributions, it recognizes the significant benefits that immigration has on its economic, social and cultural development.

Cuba

66. The Government of Cuba reported on the organization of a series of conferences on migration-related issues. Those conferences, entitled "The Nation and Emigration", were held in 1994, 1995 and 2004. At the most recent conference, the following measures were adopted: an office was established under the Ministry for Foreign Affairs to serve the needs of Cuban citizens living abroad; various measures were adopted to maximize the effectiveness of customs transit procedures; and a university scholarship programme was established for the children of Cuban emigrants.

67. The Government also reported on the regulation of migration flows in the country, which it carries out with a view to safeguarding security and providing all the required guarantees of protection, bearing in mind at all times the need to comply with the provisions of international instruments. The measures taken by the Government to regulate migration flows include free medical care for migrants at various points along the country's border, documentation control mechanisms for persons entering or leaving the country and the implementation of the international measures adopted with respect to human-trafficking and drug-trafficking activities.

68. In addition, the Government reported on the implementation of a special plan to provide camp services to assist migrants who reach Cuban shores. The plan

provides for primary health care, food distribution and arrangements for the return of such migrants to their home countries while preserving their dignity and safety.

69. The legal framework governing migration in Cuba consists of the Immigration Act and the Aliens Act (Nos. 1312 and 1313) of 1976. Information was also provided on the ratification by Cuba of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Japan

70. Japan indicated that the Immigration Control and Refugee Recognition Act is applicable to law officers who are in charge of immigration control. Despite the fact that the use of weapons is permitted by the Act, no weapons have been used by the officers for a long time. Japan also referred to the Coast Guard law and the Police Duties Execution Law, which provide for the use of weapons by State agents. In addition, in June 2005, the Parliament approved the conclusion of the Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime.

71. Moreover, Japan provided information regarding deportation procedures and the social environment of migrants. Regarding the deportation procedure, Japan indicated that the procedure for the expulsion of vulnerable persons under the Immigration Act allows the Minister of Justice to grant foreign nationals permission for provisional stay until their refugee recognition procedures are completed. It also indicated that victims of trafficking are eligible for specific legal protection and that it is possible to expel non-nationals to countries other than their countries of origin, if accepted by the country in question.

72. Regarding the social environment of migrants, Japan indicated that its public assistance system is based on the Constitution and therefore applies only to Japanese nationals; however certain categories of non-nationals, such as refugees, are eligible to receive public assistance for humanitarian reasons. Non-nationals benefit from the same services as nationals when it comes to the Labour Law, including participation in unions, education, access to the justice system and the national human rights organs.

Slovakia

73. In its reply, the Slovak authorities recall that Slovakia is bound by the Convention Relating to the Status of Refugees and the Protocol Relating to the Status of Refugees. They reported on the transposition of European asylum legislation into the Slovak legal system, which underwent several amendments. Those amendments, which transposed Council Directive 2004/83/EC of 29 April 2004, include minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who need international protection and introduce the principle of subsidiary protection.

74. The Government reported on the transposition of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in member States for granting and withdrawing refugee status with the latest amendment to the Asylum Act, which entered into effect on 1 January 2008. This Act introduced new

provisions concerning the grounds for rejecting asylum applications as inadmissible or manifestly unfounded, provided for the representation of parties in asylum proceedings, provided for cooperation with the Office of the United Nations High Commissioner for Refugees and gave a more precise definition of the type of stay applicable to asylum applicants and aliens who are granted subsidiary protection.

75. Information was also provided regarding cooperation between the Government and the International Organization for Migration following several agreements signed in Geneva in 1996 and in 1998 to develop cooperation in the return of unsuccessful asylum-seekers and irregular migrants to their countries of origin.

76. The Government provided information regarding the creation of education programmes concerning the protection of human rights and freedoms of asylum-seekers and asylum applicants in activities linked to crime prevention, the prevention of trafficking in people and gender-based violence in cooperation with different civil society organizations, the Office of the United Nations High Commissioner for Refugees and the International Organization for Migration.

77. The Government also reported on the establishment of the Ministry of Interior as the authority responsible for the European Refugee Fund established by Council Decision 2004/904/EC for the period from 1 January 2005 to 31 December 2010. The purpose of the Fund is to support efforts regarding the receipt of some categories of refugees and displaced persons.

78. The Government furnished information on the implementation in 2006 of five projects linked to reception conditions and asylum procedures, the integration of refugees and displaced persons and the voluntary return of unsuccessful asylum-seekers and irregular migrants. Those projects were financially supported by the European Refugee Fund and the State budget of Slovakia.

79. Lastly, the Government supplied information on the current examination of specifications for the establishment of an Immigration and Naturalization Office with a view to the creation of a European office for the representation of a European asylum system after 2010.

Turkey

80. Turkey indicated that it has actively participated in various migration forums and dialogue mechanisms at the national and international levels. In January 2006, Turkey assumed the Presidency of the Budapest Process, which is an intergovernmental unofficial cooperation and dialogue forum involving 50 governmental and 10 international organizations that aims to prevent irregular migration and to establish sustainable mechanisms in the field of migration management.

81. Turkey reported on its ratification in 2004 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

82. Turkey furthermore indicated that the Turkish Government and its foreign missions in receiving countries cooperate closely with the host Governments and relevant agencies to promote integration policies and support the efforts of Turkish migrants. In order to meet the need of Turkish migrants to maintain their ties with their mother tongue and culture and carry out their religious practices and to support

their integration efforts, the Government is appointing Turkish teachers and religious officials in the receiving countries.

IV. Activities of the Special Rapporteur on the human rights of migrants

83. The activities of the Special Rapporteur are carried out in accordance with Commission on Human Rights resolution 1999/44, in which the Commission established the mechanism and defined its functions. The Human Rights Council, in its decision 1/102, extended the mandate for one year. On 18 June 2008, the Human Rights Council, at its eighth session, in Geneva, adopted resolution 8/10, extending the mandate of the Special Rapporteur on the human rights of migrants for a period of three years.

84. During the reporting period, the Special Rapporteur, Jorge Bustamante, submitted to the Human Rights Council a report highlighting some of the key challenges with regard to the criminalization of irregular migration and outlining some elements for State responsibility with regard to the protection of irregular migrants, a report on the communications sent to Governments and replies received and a report on his country mission to the United States of America (A/HRC/7/12 and Add.1 and 2).

85. At the invitation of the Government of Mexico, the Special Rapporteur visited the country from 9 to 15 March 2008. Among his concerns, the Special Rapporteur noted reports of impunity for instances of corruption, including bribery and extortion, violence against women and trafficking in children. He was particularly concerned about the alarming reports of child labour and noted that the situation of non-accompanied minor migrants seemed to pose a particular challenge for the Government of Mexico.

86. At the invitation of the Government, the Special Rapporteur visited Guatemala from 24 to 28 March 2008. He was encouraged by the political will of the Government to adopt a more comprehensive programme relating to the question of migration. The Special Rapporteur welcomed the efforts of the Government to facilitate the return to their families of non-accompanied minor migrants deported from Mexico and praised the work accomplished by civil society. However, he noted a lack of coordination among the various State institutions in charge of migration issues. He noted that the current Law on Migration (1998) has many loopholes that allow excessive discretion on behalf of the migration authorities and the police when dealing with migrants.

87. The Special Rapporteur will present the reports on his country missions to Mexico and Guatemala at a future session of the Human Rights Council.

V. Status of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

88. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families entered into force on 1 July 2003. As at

14 August 2008, 37 States had ratified the Convention: Albania, Algeria, Argentina, Azerbaijan, Belize, Bolivia, Bosnia and Herzegovina, Burkina Faso, Cape Verde, Chile, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Honduras, Kyrgyzstan, Lesotho, Libyan Arab Jamahiriya, Mali, Mauritania, Mexico, Morocco, Nicaragua, Peru, Philippines, Senegal, Seychelles, Sri Lanka, Syrian Arab Republic, Tajikistan, Timor-Leste, Turkey, Uganda and Uruguay. The entry into force of the Convention assists in securing a protective mechanism for the human rights of migrants, including those in an irregular situation. All Member States that have not yet become a party to the Convention are urged to consider acceding to this instrument promptly.

VI. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

89. The Committee, composed of independent experts, monitors the implementation of the Convention by its States parties. Since its first session, held in March 2004, the Committee has considered the initial reports submitted by Mali, Mexico, Egypt, Ecuador, Bolivia and the Syrian Arab Republic.

90. The Committee considered the initial report of Ecuador (CMW/C/ECU/1) at its seventh session, held in November 2007. In its concluding observations (CMW/C/ECU/CO/1) the Committee recommended, inter alia, that Ecuador: fully harmonize its national legislation with the Convention; develop awareness-raising programmes for judicial officials on the importance of the use of human rights treaties, including the Convention; create a database in line with all aspects of the Convention concerning migrant workers in transit or in Ecuador; continue to provide systematic education and training to all officials working in the area of migration or in contact with migrant workers and members of their families; make the provisions of the Convention widely known to both Ecuadorian migrant workers abroad and foreign migrant workers residing or in transit in Ecuador, as well as to communities as a whole, through, inter alia, long-term awareness-raising campaigns; ensure that migrants and members of their families detained for violating provisions relating to migration are deprived of their liberty for as short a time as possible; and continue to take steps to guarantee that they be held separately from convicted persons or persons detained pending trial.

91. The Committee also recommended that the State party eliminate the requirement of an exit permit for nationals wishing to leave Ecuador, in accordance with article 8 of the Convention; consider reviewing the practice and policy of asking for a certificate of criminal record (*pasado judicial*) as an entry requirement applicable exclusively to Colombian migrants, as it may contribute to stigmatization and stereotyping; consider abolishing or amending article 131 of the Migration Law with a view to avoiding the treatment of violations of provisions relating to migration in the criminal justice system.

92. Furthermore, the Committee recommended that the State party continue to work towards the elimination of all kinds of hazardous forms of labour for migrant children and to intensify its efforts to tackle the problem of commercial sexual exploitation of migrant children, especially in the Lago Agrio region, including by providing DINAPEN (the special police for children) with appropriate human and financial resources.

93. In addition, the Committee recommended that migrant children involved in prostitution always be treated as victims and never be criminalized or penalized and that women migrant workers in domestic service have access to mechanisms for bringing complaints against employers. It also recommended that Ecuador ensure that all migrant workers and members of their families, irrespective of their immigration status, enjoy in practice the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State party.

94. The Committee considered the initial report of Bolivia (CMW/C/BOL/1) at its eighth session, held in April 2008. In its concluding observations (CMW/C/BOL/CO/1), the Committee recommended that Bolivia strengthen its efforts to fully incorporate the Convention into domestic law; adopt a migration law fully harmonized with international treaties; create a database in line with all aspects of the Convention, including systematic data as a tool for effective migration policy and for the application of the various provisions of the Convention; intensify training for all officials working in the area of migration, in particular police and border personnel, as well as officials at the local level dealing with migrant workers; continue to work with civil society organizations to disseminate information and promote the Convention; take the steps necessary to ensure access by migrant workers to information about their rights under the Convention; strengthen its efforts to inform migrant workers of the administrative and judicial remedies available to them and address their complaints in the most effective manner; ensure that when migrants or members of their families are detained for the violation of provisions relating to migration they are deprived of their liberty for as short a time as possible; ensure that consular services respond more effectively to the need for protection of Bolivian migrant workers and members of their families; ensure that migrant workers and members of their families are expelled from the territory of the State party only pursuant to a decision taken by the competent authority in conformity with the law, which can be reviewed on appeal; make regularization procedures more accessible, including through the revision of tariffs and the elimination of delays; take steps to facilitate the exercise of voting rights by Bolivian migrant workers residing abroad; create mechanisms to facilitate the identification of vulnerable migrant groups, such as refugees and victims of trafficking, and provide appropriate assistance to the victims; and consider setting up mechanisms to facilitate the voluntary return of migrant workers and members of their families as well as their durable social and cultural reintegration.

95. The Committee considered the initial report of the Syrian Arab Republic (CMW/C/SYR/1) at its eighth session, held in April 2008. In its concluding observations (CMW/C/SYR/CO/1), the Committee recommended that the State party consider measures aimed at ensuring that both Arab and non-Arab migrants are provided with equal access to information concerning their rights under the Convention; consider policies under which the detention of migrant workers in an irregular situation would generally be envisaged only as a measure of last resort and that, in all circumstances, necessary law enforcement measures, including deportation, would be carried out with respect for due process; provide adequate training to all judicial personnel and law enforcement officials on respect for human rights and non-discrimination on ethnic or racial grounds and on the rules of due process in connection with detention and deportation; ensure that private employers

comply with the rule that the passports of migrant workers may not be withheld for any reason; and reconsider its current policy of limiting the amount of remittances allowed to be made by migrant workers in the Syrian Arab Republic. Finally the Committee recommended the adoption of the draft law on trafficking in persons.

96. In addition to the consideration of States parties' reports, the Committee discussed its possible contribution to the Global Forum on Migration and Development, to be held in Manila in October 2008, and addressed a proposal to the organizers of the Forum for consideration as an element of a background paper on human rights, migration and development. The Committee also marked the fifth anniversary of the entry into force of the Convention with a round table on the importance of a human rights-based approach to migration and the relevance of the Convention to today's migration challenges.

VII. Conclusions and recommendations

97. **The Secretary-General welcomes the responses submitted by Member States on the use of data and statistics on the contributions of migrants to recipient countries. He commends in particular those States which have submitted information in the previous reporting periods. The Secretary-General encourages those States which have not done so to provide such information, which will be included in his next report to the General Assembly.**

98. **The Secretary-General takes note of the legislation adopted and the measures and initiatives taken by Member States with a view to promoting and protecting the human rights of migrants.**

99. **The Secretary-General recalls that when exercising their sovereign right to adopt and implement migratory policies, States have an obligation to abide by international human rights law with a view to guaranteeing the protection of migrants and full respect for their human rights.**

100. **The Secretary-General regrets the lack of precise statistics on migration flows and on other migration-related issues. He recalls the importance of this tool for an effective migration policy in order to assess the challenges, the obstacles, the progress and the achievements of the situation of migrants and the implementation of the international and national framework for their protection. The Secretary-General encourages States to pursue their efforts to create a comprehensive database on labour demand in host countries.**

101. **The Secretary-General recalls the importance for Member States of undertaking information campaigns addressed to migrants aimed at clarifying their rights and opportunities and raising awareness about the dangers of undocumented migration.**

102. **The Secretary-General welcomes those States which have adopted national plans of action, paying particular attention to issues related to migration, and encourages them to continue with their implementation. He also recommends that Member States that have not done so to consider adopting national action plans.**

103. **The Secretary-General encourages the Special Rapporteur on the human rights of migrants to continue his work for the protection of the human rights**

and fundamental freedoms of migrants regardless of their migration status, especially those of women and children, through his dialogue with Member States and his programme of country visits.

104. The Secretary-General encourages States to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Secretary-General further encourages States parties to make declarations under articles 76 and 77 of the Convention recognizing the competence of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families to receive and consider inter-State and individual complaints.

105. The Secretary-General also encourages Member States to consider ratifying the United Nations Convention against Transnational Organized Crime and its supplemental Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and to fully implement them.

106. The Secretary-General encourages States to pay particular attention to the provisions of the Recommended Principles and Guidelines on Human Rights and Human Trafficking developed by the Office of the United Nations High Commissioner for Human Rights in 2002 (E/2002/68/Add.1).